

Superseded 5/12/2015

78B-6-133 Contested adoptions -- Rights of parties -- Determination of custody.

- (1) If a person whose consent for an adoption is required pursuant to Subsection 78B-6-120(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether proper grounds exist for the termination of that person's rights pursuant to the provisions of this chapter or Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.
- (2)
 - (a) If there are proper grounds to terminate the person's parental rights, the court shall order that the person's rights be terminated.
 - (b) If there are not proper grounds to terminate the person's parental rights, the court shall:
 - (i) dismiss the adoption petition;
 - (ii) conduct an evidentiary hearing to determine who should have custody of the child; and
 - (iii) award custody of the child in accordance with the child's best interest.
- (3) Evidence considered at the custody hearing may include:
 - (a) evidence of psychological or emotional bonds that the child has formed with a third person, including the prospective adoptive parent; and
 - (b) any detriment that a change in custody may cause the child.
- (4) If the court dismisses the adoption petition, the fact that a person relinquished a child for adoption or consented to the adoption may not be considered as evidence in a custody proceeding described in this section, or in any subsequent custody proceeding, that it is not in the child's best interest for custody to be awarded to such person or that:
 - (a) the person is unfit or incompetent to be a parent;
 - (b) the person has neglected or abandoned the child;
 - (c) the person is not interested in having custody of the child; or
 - (d) the person has forfeited the person's parental presumption.
- (5) Any custody order entered pursuant to this section may also:
 - (a) include provisions for:
 - (i) parent-time; or
 - (ii) visitation by an interested third party; and
 - (b) provide for the financial support of the child.
- (6)
 - (a) If a person or entity whose consent is required for an adoption under Subsection 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2).
 - (b) The court may also finalize the adoption if doing so is in the best interest of the child.
- (7)
 - (a) A person may not contest an adoption after the final decree of adoption is entered, if that person:
 - (i) was a party to the adoption proceeding;
 - (ii) was served with notice of the adoption proceeding; or
 - (iii) executed a consent to the adoption or relinquishment for adoption.
 - (b) No person may contest an adoption after one year from the day on which the final decree of adoption is entered.
 - (c) The limitations on contesting an adoption action, described in this Subsection (7), apply to all attempts to contest an adoption:
 - (i) regardless of whether the adoption is contested directly or collaterally; and
 - (ii) regardless of the basis for contesting the adoption, including claims of fraud, duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of jurisdiction.

- (d) The limitations on contesting an adoption action, described in this Subsection (7), do not prohibit a timely appeal of:
 - (i) a final decree of adoption; or
 - (ii) a decision in an action challenging an adoption, if the action was brought within the time limitations described in Subsections (7)(a) and (b).